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12 UNITED STATES BANKRUPTCY COURT  
13 EASTERN DISTRICT OF CALIFORNIA  
14 SACRAMENTO DIVISION

15 In re

16 CLINTON C. MYERS,  
17 Debtor.

18 Case No. 08-31840-B-7

19 Chapter 7

20 DC No. MLG-084

21 **MOTION FOR ORDER APPROVING  
22 SALE OF PROPERTY**

23 Date: November 8, 2011

24 Time: 9:32 a.m.

25 Place: 501 I Street  
Department B  
Sacramento, California

26 Judge: Hon. Thomas C. Holman

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28 Hank M. Spacone ("Trustee"), the duly appointed and acting chapter 7 trustee in the  
bankruptcy estate of Clinton C. Myers (the "Debtor"), hereby seeks an order pursuant to Section  
363 of the Bankruptcy Code<sup>1</sup> authorizing the Trustee to sell a certain promissory Note payable to  
the estate (the "Note") to Thomas W. Ashcraft (the "Buyer"), or such overbidder who tenders a  
higher and better bid. In support of the Trustee's motion to approve sale (the "Motion"), the  
Trustee respectfully represents as follows:

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30 <sup>1</sup> All references herein to the "Bankruptcy Code" are references to Title 11 of the United States  
31 Code §§ 101-1532 (2005); all references to a "Section" or "Sections" are to a particular section or  
32 sections thereof.

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I.

## **BACKGROUND**

3 On August 22, 2008, Debtor commenced this case by filing a petition for chapter 7  
4 bankruptcy relief. Trustee was appointed as the chapter 7 trustee in the case and presently serves  
5 in that capacity.

On the Debtor's Schedule B, he disclosed his 100% interest in CC Myers Equipment Company, Inc. ("CCMEC") and reflected a value of \$105,000. CCMEC was formed on December 19, 1994. The purpose of the entity was to purchase and finance equipment used by C.C. Myers, Inc. ("CCMI") on construction projects. The estate's interest in CCMI was sold in a transaction to the Companies ESOP which was approved by the bankruptcy court in the first quarter of 2011. Declaration of Hank M. Spacone ("Spacone Decl.") ¶2.

In 2007 the purchased equipment, then owned by CCMEC, along with the corresponding debt was transferred to CCMI. The only other assets that were held by this entity were two properties. One property was sold prior to calendar 2007 and the other property addressed at 7904 Auburn Blvd., Citrus Heights, California (approximately 1 acre) was sold to 1-31 Development, LLC on October 29, 2007 for \$100,000. 1-31 Development is a single member LLC owned by the Debtor's son, Clinton Wallace Myers. Spacone Decl. ¶3.

18 As part of that sale, CCMEC carried back a note in the amount of \$100,000. The terms of  
19 the note include an interest rate of 5% per year, principal and interest due and payable at the end of  
20 three years. The principal of \$100,000 and the accrued and unpaid interest of \$15,000 was due  
21 and payable November 2, 2010. The note has no personal or corporate guarantees ("non-  
22 recourse"). The note is secured by the property only. Spacone Decl. ¶4.

23 The property currently has some entitlements, but those are set to expire in May of 2012.  
24 This includes the ability to build a single commercial structure not to exceed 5,000 square feet.  
25 However, it is unlikely that the entitlements will be re-approved because the property currently sits  
26 in a flood plain and the city of Citrus Heights (the “City”) does not allow for development in a  
27 flood plain. Further, the current depressed real estate market and economic environment does not  
28 foster development of the parcel. Spacone Decl. ¶5.

1 The City had offered 1-31 Development \$30,600 for a right of way easement and some  
2 portion of the property for underground work and to expand an existing road. Because 1-31  
3 Development did could not come to terms with the City, which would have included getting  
4 CCMEC's consent to the transaction, the City has now sued 1-31 Development in order to start the  
5 eminent domain process. It is unclear exactly what impact this will have on the value of the  
6 property. Spaccone Decl. ¶6.

7 The Trustee has received an offer from Thomas W. Ashcraft to purchase the outstanding  
8 note for \$70,000. Buyer has provided a \$5,000 deposit refundable if the transaction is not  
9 approved by the bankruptcy court. A true and correct copy of a Purchase Offer is attached hereto  
10 as Exhibit A. As described below, the Trustee believes that selling the Note for \$70,000 is in the  
11 best interest of the estate. Spacone Decl. ¶7.

II.

## JURISDICTION

Jurisdiction for the filing of this Motion exists pursuant to 28 U.S.C. §§ 157 and 1334; 11 U.S.C. §§ 363(b); Federal Rule of Bankruptcy Procedure 6004; and the reference to this Court by the United States District Court for the Eastern District of California.

III.

## DISCUSSION

## **19 A. Bidding Procedures**

20 The Buyer's acceptance of the \$70,000 purchase price is subject to Bankruptcy Court  
21 approval and overbid. Parties interested in making overbids should promptly contact the  
22 undersigned counsel for the Trustee at the address indicated above for information about the  
23 requirements for tendering an overbid.

24 Any bidders who wish to bid over \$70,000 should be prepared to attend the hearing on sale  
25 of the Note on June 28, 2011 at 9:32 a.m. The hearing will be conducted in the courtroom of the  
26 Honorable Thomas C. Holman, United States Bankruptcy Court, 501 I Street, Department B,  
27 Sacramento, CA 95814.

**28** The Trustee will continue to market the Note, and if additional offers are received, shall

1 auction the Property in-court at the hearing on approval for sale of the Property.

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3       **B.     Legal Authority**

4       Section 363 of the Bankruptcy Code provides that a Trustee may sell property of a  
5 bankruptcy estate. *See* 11 U.S.C. § 363(b). In addition, courts that have addressed the issue of a  
6 sale of all assets outside the ordinary course of business generally apply standards for court  
7 approval of such a sale. Most courts require a "business justification" for the transaction. *In re*  
8 *Equity Funding Corp. of America*, 492 F.2d 793 (9th Cir.), *cert. denied*, 419 U.S. 964 (1974) (sale  
9 of assets approved for "cause shown"); *In Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19  
10 (9th Cir. B.A.P. 1988) (there must be some articulated business justification for using, selling or  
11 leasing the property outside of the ordinary course of business).

12       Sale of property in a chapter 7 estate should be approved if the Court determines that the  
13 proposed sale is in the best interest of the estate. *WBQ Partnership v. Virginia*, 189 B.R. 97  
14 (Bankr. E.D. Va. 1995).

15       1-31 Development has refused to repay the outstanding balance. Trustee believes that 1-31  
16 does not have the funds to pay the balance. Accordingly, selling the Note for \$70,000 would be in  
17 the best interest of the estate because the Trustee believes that it is the best price obtainable for the  
18 Note. The Note is non-recourse, and to the Trustee's knowledge CCMEC has no funds or assets  
19 other than the Property, nor any liabilities. The only other option for obtaining value for the Note  
20 would be to foreclose on the Property. This would be costly and time consuming, and there would  
21 be no certainty as to the amount the estate would receive. Additionally, the pending eminent  
22 domain proceedings against the Property create further uncertainty. The Trustee believes that  
23 receiving \$70,000 for the Note now is reasonable.

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IV.

## **CONCLUSION**

WHEREFORE, the Trustee respectfully requests that the Court enter an order authorizing him to sell the Note on behalf of CCMEC, in his capacity as sole shareholder, to the Buyer (or any overbidder). The Trustee respectfully requests that the Court waive the ten (14) day stay of the effectiveness of the sale order imposed pursuant to Federal Rule of Bankruptcy Procedure 6004(g) so that the sale can close immediately following entry of the sale order

**8** | DATED: October 11, 2011

Mcnutt Law Group LLP

10 By: /s/ Douglas C. Graham  
11 Douglas C. Graham  
12 Attorneys for HANK M. SPACONE, Chapter 7  
Trustee